Supreme Court, U.S.
FILED
05108 FEB 27 2006
OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

GOODSPEED AIRPORT, LLC, ET AL., PETITIONERS

v.

EAST HADDAM INLAND WETLANDS AND WATERCOURSES COMMISSION, ET AL., RESPONDENTS

GOODSPEED AIRPORT, LLC, ET AL., PETITIONERS

v.

ARTHUR J. ROCQUE, JR., COMMISSIONER OF ENVIRONMENTAL PROTECTION, RESPONDENT

On Petition For A Writ Of Certiorari To The Supreme Court Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

LINDA T. COBERLY
Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

GENE C. SCHAERR
Counsel of Record
ERIC L. HIRSCHHORN
STEFFEN N. JOHNSON
JEFFREY M. ANDERSON
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000

Counsel for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether the application of state and local land use regulations that interfere with aircraft flight paths and the safety of takeoffs and landings at a public use airport is preempted by the Federal Aviation Act or other provisions of federal aviation law, which provide that "the Federal Government shall have exclusive sovereignty of the airspace of the United States," including "airspace needed to ensure safety in the takeoff and landing of aircraft." 49 U.S.C. §§ 40103, 40102(a)(30).

PARTIES TO THE PROCEEDINGS

In *Goodspeed Airport, LLC, et al.* v. *East Haddam Inlands Wetlands and Watercourses Commission, et al.*, petitioners are Goodspeed Airport, LLC, Timothy Mellon, and Timothy Evans. Respondents are the East Haddam Inland Wetlands and Watercourses Commission and James Ventres, the East Haddam Land Trust, and The Nature Conservancy.

In *Goodspeed Airport, LLC, et al.* v. *Rocque*, petitioners are Goodspeed Airport, LLC and Timothy Mellon. Respondents are Arthur J. Rocque, Jr., Commissioner of the Connecticut Department of Environmental Protection, the East Haddam Land Trust, and The Nature Conservancy.

Pursuant to Rule 29.6 of the Rules of this Court, petitioner Goodspeed Airport, LLC states that it has no parent corporation, and that no publicly traded company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 1

A. Exclusive Federal Regulation of Air Safety 3

B. Goodspeed Airport and Maintenance of Runway 14/32 6

C. The Commission's Order and Regulations 8

D. Proceedings in the Trial Court 9

E. Proceedings in the Connecticut Appellate Courts 11

REASONS FOR GRANTING THE WRIT 13

I. The Decisions Below Involve A Recurring Issue Of Great Importance To The Safety Of Millions Of Passengers Traveling To And From The Nation's 5200 Public Use Airports 14

II. The Decisions Below Conflict With The Decisions Of Two Federal Courts Of Appeals And Are Contrary To The Position Of The United States. 19

A. The Decisions Below Conflict With Decisions Of The Second And Ninth Circuits. 19

B. The Decisions Below Contravene The United States' Position On Preemption.....23

III. The Decisions Below Are Inconsistent With The Federal Aviation Act, The Airline Deregulation Act, And This Court's Preemption Doctrine.....25

A. Express Preemption.....26

B. Implied Preemption.....28

CONCLUSION.....30

APPENDIX A.....1a

APPENDIX B.....57a

APPENDIX C.....67a

APPENDIX D.....98a

APPENDIX E.....99a

APPENDIX F.....100a

APPENDIX G.....101a

APPENDIX H.....102a

APPENDIX I.....114a

APPENDIX J.....115a

APPENDIX K.....116a

TABLE OF AUTHORITIES

Page(s)

CASES:

Abdullah v. *American Airlines*, 181 F.3d 363 (3d Cir. 1999) 22, 23

Allegheny Airlines, Inc. v. *Village of Cedarhurst*, 238 F.2d 812 (2d Cir. 1956) 30

Burbank-Glendale-Pasadena Airport Authority v. *City of Los Angeles*, 979 F.2d 1338 (9th Cir. 1992) 21

City of Burbank v. *Lockheed Air Terminal, Inc*, 411 U.S. 624 (1973) 15, 27

Cleveland v. *Piper Aircraft Co.*, 985 F.2d 1438 (10th Cir. 1993) 22

Condor Corp. v. *City of St. Paul*, 912 F.2d 215 (8th Cir. 1990) 22

Cox Broadcasting Corp. v. *Cohn*, 420 U.S. 469 (1975) 13

Crosby v. *National Foreign Trade Council*, 530 U.S. 363 (2000) 26

English v. *General Elec. Co.*, 496 U.S. 72 (1990) 26

French v. *Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989) 22

Greene v. *B.F. Goodrich Avionics Sys., Inc.*, 409 F.3d 784 (6th Cir. 2005) 22

Griggs v. *Allegheny County*, 369 U.S. 84 (1962) 11, 12

Gustafson v. *City of Lake Angelus*, 76 F.3d 778 (6th Cir. 1996) 22

Hines v. *Davidowitz*, 312 U.S. 52 (1941) 26, 29

Hoagland v. *Town of Clear Lake*, 415 F.3d 693 (7th Cir. 2005) 22

In re Air Crash Disaster at John F. Kennedy Int'l Airport, 635 F.2d 67 (2d Cir. 1980).....22

In re Commercial Airfield, 752 A.2d 13 (Vt. 2000).....22-23

International Paper Co. v. *Ouellette*, 479 U.S. 481 (1987).....30

Kohr v. *Allegheny Airlines, Inc.*, 504 F.2d 400 (7th Cir. 1974).....22

Morales v. *Trans World Airlines, Inc.*, 504 U.S. 374 (1992).....26, 27

Northwest Airlines, Inc. v. *Minnesota*, 322 U.S. 292 (1944).....3, 29

Richmond, Fredericksburg & Potomac R.R. Co. v. *Metropolitan Washington Airports Auth.*, 468 S.E.2d 90 (Va. 1996).....19

Rocque v. *Mellon et al.*, 275 Conn. 161, 881 A.2d 972 (Conn. Aug 30, 2005).....1

United States v. *Causby*, 328 U.S. 256 (1946).....3

United States v. *City of New Haven*, 367 F. Supp. 1338 (D. Conn. 1973).....20

United States v. *City of New Haven*, 496 F.2d 452 (2d Cir. 1974).....19-20

Ventres v. *Goodspeed Airport, LLC, et al.*, 881 A.2d 937 (Conn. Aug 30, 2005).....1

Vorhees v. *Naper Aero Club, Inc.*, 272 F.3d 398 (7th Cir. 2001) (No. 00-2545).....3, 23, 25

Vorhees v. *Naper Aero Club, Inc.*, 96 F. Supp. 2d 820 (N.D. Ill. 2000).....23-24

CONSTITUTION, STATUTES, AND REGULATIONS:

U.S. Const. art. VI, § 2.....1

28 U.S.C. § 1257(a).....1, 13

49 U.S.C. § 40102(a)(30) 4, 26
49 U.S.C. § 40103 ..... 3, 14, 26
49 U.S.C. § 40103(a) 4
49 U.S.C. § 40103(b)(1) 4
49 U.S.C. § 44701(c) 15, 28
49 U.S.C. § 44701(d)(1)(A) 14, 28
49 U.S.C. § 41713(b)(1) 3, 27
14 C.F.R. Part 61 ..... 4, 28
14 C.F.R. Part 62 4
14 C.F.R. Part 63 4
14 C.F.R. Part 64 4
14 C.F.R. Part 65 ..... 4, 28
14 C.F.R. Part 66 4
14 C.F.R. Part 67 4
14 C.F.R. Part 71 ..... 4, 28
14 C.F.R. Part 77 ..... 4, 28
14 C.F.R. Part 91 ..... 4, 28
14 C.F.R. Part 139 4
14 C.F.R. § 77.2 6
14 C.F.R. § 77.21(a) 2, 4, 29
14 C.F.R. § 77.23(a)(5) 2, 4, 29
14 C.F.R. § 77.25(c) 4
14 C.F.R. § 77.25(d) 5
14 C.F.R. § 77.25(d)(1) 5
14 C.F.R. § 77.25(d)(2) 5
FAA Advisory Circular No. 150/5300-13 ..... 2, 4-5, 29

Conn. Gen. Stat. § 51-199(c) 11

Regulations, Town of East Haddam, Conn., Inland/Wetlands and Watercourses Comm'n 9

MISCELLANEOUS:

S. Allen, *Airport Development Alarms Environmentalists*, Boston Globe, Oct. 8, 1995 18

E. Backhaus, *Airport Authority Rejects $25,000 Audubon Request*, Orlando Sentinel, Mar. 7, 1998 18

W. Bee, *Rancho Murieta Airport Sues Over Cutting Trees Near Runway*, Sacramento Bee, July 9, 2004 16

B. Deiters, *Judge Will Settle Feud Between Couple, Airport*, Grand Rapids Press, June 12, 2004 17

Federal Aviation Admin., *Administrator's Fact Book* 8 (Aug. 2005) 14

J. Godden, *Next Time, They'll Hire an Arborist*, Seattle Times, Feb. 2, 1994 16

D. Guthrie, *Next Case: Trees vs. Runway*, Grand Rapids Press, Jan. 5, 2003 17

J. Harper, *Waiting for the Trees to Grow*, The Virginian-Pilot (Norfolk, Va.), May 23, 1996 18

J. Kuehner, *Metroparks to Make Way for Planes*, Cleveland Plain Dealer, June 4, 2004 16-17

R. LaFrombois, *Neighbors Not Happy About Downtown Airport's Tree Cutting*, Wausau Daily Herald, June 10, 2005 17

B. Lindelof, *Flight Risk Safety Concerns Are Threatening Trees at the Rancho Murieta Airport*, Sacramento Bee, Apr. 13, 2002 16

S. Mack, *Pittsfield Airport Plan Hindered by Trees*, Bangor Daily News, Jan. 17, 2001 17

J. McDermott, *John's Island Trees on Chopping Block*, Post and Courier (Charleston, S.C.), Aug. 22, 1998 18

National Transportation Safety Board, *Annual Review of Aircraft Accident Data: U.S. General Aviation, Calendar Year 2000* (2004) 15-16

J. Rather, *Islip Takes Off*, New York Times, Feb. 18, 2001 17

T. Richardson, *Pilot Is Injured as Plane Crashes in Marlborough*, Boston Globe, Aug. 8, 2004 19

M. Rosenberg, *Airport Safety vs. Quakers' Serenity*, New York Times, May 2, 1993 17

J. Tedesco, *Plane Crash Claims Rancher*, San Antonio Express-News, Jan. 19, 2002 19

UNC-CH Planning to Remove Trees, News & Observer (Raleigh, N.C.), Oct. 15, 2005 18

L. Warren, *Airport Files for Nearby Land*, Dayton Daily News, Jan. 10, 2003 16

V. Watson, *Newport State Airport Gets $100,000 U.S. Grant*, Providence Journal-Bulletin, June 25, 1999 17

G. Weeks, *Judge to Port: Remove Dangerous Trees by Nov. 1*, Anacortes American (Anacortes, Wash.), Apr. 8, 2005 16

N. Williams, *Milford Residents Voice Concerns on Tree Cutting, Plans for Airport*, Morning Call (Allentown, Pa.), Apr. 16, 2003 18

G. Worland, *Prairie Wild Card in Airport Future*, Rockford Register Star, May 14, 2001 17

PETITION FOR A WRIT OF CERTIORARI

Petitioners Goodspeed Airport, LLC, Timothy Mellon, and Timothy Evans respectfully petition the Court for a writ of certiorari to review the judgments of the Supreme Court of Connecticut in these related cases.

OPINIONS BELOW

The decision of the Supreme Court of Connecticut in *Ventres* v. *Goodspeed Airport, LLC, et al.* (Pet. App. 1a-56a) is reported at 881 A.2d 937. That court's decision in *Rocque* v. *Mellon et al.* (Pet. App. 57a-66a) is reported at 881 A.2d 972. The consolidated decision of the Superior Court of Connecticut (Pet. App. 67a-97a) is not reported.

JURISDICTION

The judgments of the Supreme Court of Connecticut were entered on August 30, 2005. Pet. App. 1a, 57a. Petitioners' timely motions for reconsideration were denied on October 25, 2005. Pet. App. 98a, 100a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, § 2. The relevant federal aviation statutes and regulations are reprinted at Pet. App. 102a-113a.

STATEMENT

This case presents an important issue of federal law that is vital to the safety of the nation's airways: whether the application of state land use laws to the navigable airspace surrounding an airport is preempted by provisions of